

Court No. - 8

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5821 of 2023

Applicant :- Kusma Devi

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Surya Narayan Mishra, Anil Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Anil K. Tripathi, learned counsel for the accused-applicant and Sri Ashwani Kumar Singh, learned A.G.A. and perused the record.
2. This is the second bail application. First bail application got rejected by this Court vide order dated 18.11.2022 passed in Criminal Misc. Bail Application No.13269 of 2022.
3. The present bail application under Section 439 Cr.P.C. has been filed seeking bail in FIR No.300 of 2022 under Sections 498-A and 304-B IPC and Section 3/4 Dowry Prohibition Act, Police Station Kotwali Dehat, Gonda.
4. The accused-applicant is mother-in-law of the deceased, Seema. Marriage between the deceased and co-accused, Praveen took place on 26.04.2016. It is alleged that from the very beginning of the marriage, the accused-applicant, the husband of the deceased, elder brother of the husband of the deceased used to torture, harass and subject the deceased to cruelty for dowry demand of a gold chain and Rs.50,000/- cash. Out of wedlock, a son got born who was one and a half years old at the time of death of the deceased. It is alleged that on 27.07.2022, the deceased was killed inside the house of the accused-applicant.
5. Post mortem examination would disclose following ante

mortem injuries:-

"(i) Ligature mark present 28 x 2 cm gap of 4 cm left side upper neck left ear, 4 cm below chin, 5 cm on dissection u/l ligature mark and white glistening parchment;

(ii) Contusion 2 x 1 cm on over lower mid;

(iii) Contusion 8 x 2 cm over left;

(iv) Contusion 10 x 4 cm left side back;

(v) Contusion 6 x 2 cm left side;

(vi) Contusion 2 x 1 cm right lower leg;

(vii) Crash injury lacerated wound find of left foot; and

(viii) Crust injury lacerated wound of 4 cm on toe."

6. There are allegations of dowry demand and subjecting the deceased to cruelty soon before her death.

7. Learned counsel for the accused-applicant submits that the deponent is the daughter of the accused-applicant, who is aged about 25 years. He marriage is to be preformed and except for her, no one is present in the family. He further submits that even if it is believed that the deceased has suffered injuries, those injuries might have been caused by the husband of the deceased, for which the accused-applicant cannot be held responsible.

8. As per the trial court report, till date even charges have not been framed. Accused-applicant has been in jail since 29.7.2022.

9. Considering the above facts and circumstances of the case, coupled with the contentions raised by the learned counsel for both sides, and without entering into the merit of the case, the accused-applicant is entitled to be released on bail.

10. Let applicant **Kusma Devi** be released on bail in the above case crime number on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure her presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against her, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against her in accordance with law.

Order Date :- 24.5.2023

Rao/-